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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/655,112      | 09/04/2003  | Darren P. Chermack   |                     | 6879             |

7590 12/16/2005

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| EXAMINER |
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HWANG, VICTOR KENNY

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3764

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/655,112             | CHERMACK, DARREN P. |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Victor K. Hwang        | 3764                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2005.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-13 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2003 and 18 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

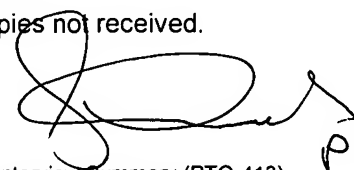
- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date Sept. 4, 2003.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Priority*

1. If applicant desires to claim the benefit of a prior-filed application under 35 U.S.C. 119(e), a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) must be included in the first sentence(s) of the specification following the title or in an application data sheet. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications.

If the instant application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR

1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required.

Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

### *Specification*

2. The disclosure is objected to because of the following informalities: the heading "REFERENCES" and the text following on pages 1 and 2 of the substitute specification is unnecessary since the patents listed have been cited on Applicant's IDS and will be listed under the heading References Cited on any patent that may issue, and it is suggested that this listing be deleted from the specification.

Appropriate correction is required.

*Claim Objections*

3. Claims 1, 2, 4-6 and 8-10 are objected to because of the following informalities:

in claim 1, the upper case letters used after each section heading should be made lower case, since only the first word of a claim should be capitalized;

in claim 2, the recitation “the means for **simultaneously** extending the extendable elements” lacks positive antecedent basis and presumably the limitation in section e) of claim 1 includes simultaneous extension of the extendable elements;

in claim 2, the recitation “the apertures in the first and second ends” lacks positive antecedent basis and presumably the weights have first and second ends with apertures;

in claim 4, the recitation of first and second rods appears to add extendable elements in addition to the bar recited in claim 2, and presumably, the bar comprises the first and second rods;

in claim 5, the recitation “the rods” lacks positive antecedent basis and presumably refers to the bar recited in claim 2 or the claim dependency should be changed to depend from claim 4;

in claim 6, the recitation “the rods” lacks positive antecedent basis and presumably refers to the bar recited in claim 2 or the claim dependency should be changed to depend from claim 4 or claim 5;

in claim 8, the recitation of “a plurality of weights” is unclear because claim 1 has already recited a weight unit comprising a plurality of weights similar to that described in this claim, and presumably the plurality of weights are the same, but the language needs to be clarified;

in claim 9, the recitation “the end surfaces” lacks positive antecedent basis and presumably the weights have end surfaces; and

in claim 10, the recitation “the top opening” and “the bottom” lack positive antecedent basis and presumably the upstanding pairs of weights form a top opening and have a bottom dimension.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3, 5-10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by *Hald et al.* (US Pat. 6,228,003 B1). *Hald et al.* discloses a weight lifting system comprising a weight unit consisting of a plurality of weights 12 or 167 with each of the weights formed of a pair of upstanding plates and at least one bar that connects each pair of plates. A handle 14 or 151 has opposite ends. Extendable elements 94,98 or 170,172 protrude from each end of the handle and are movable simultaneously to be extended or retracted into engagement with a selected number of weights. Indicia provides a visual indication of the amount of weight selected.

The handle further comprises a grip 81 or 152 having two ends, each end having an endplate 82,84 or 158,160,162,164 permanently attached, and a channel or channels 68,70,78 in the grip in which the extendable elements may be extended from or retracted into. The grip is configured to be grasped by a user and contains two channels therein, each housing an extendable element consisting of a bar movably disposed within each channel of the grip and a pinion gear 92 or 178 to permit the simultaneous movement of the bars. The handle has adequate space to allow room for two hands. Note the use of two hands is an intended use and the adequate space on the handle is merely a change in size of the handle. Industry standard grip dimensions is not defined in the specification.

A knob 72 is optionally provided to move a first bar, which in turn moves the second bar. When knob 72 is not present, a user may directly contact a bar for selection of the desired number of weights (col. 7, lines 16-18 and lines 45-49). The knob may also be recessed below the surface of the grip such that the gripping surface has no external device or mechanism (col. 7, lines 61-64). Slots 74 or 194 are provided provide an indication of positive locking selection of the weights. Movement of the knob results in turning of the pinion gear.

Each weight 12 consists of two upstanding weight plates connected by at least one bar. Each of weights 167 consists of two upstanding weight plates connected by two bars 168. The smaller weight units are nested within larger weight units. Each weight plate has an aperture to permit the extendable elements to extend therethrough. The upstanding plates have surfaces that are parallel to the surfaces of the ends of the handle and are angled away from each other slightly to permit easier nesting engagement of the weights.

6. Claims 1, 8, 9 and 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by *Chen* (US Pat. 6,500,101 B1). *Chen* discloses a weight lifting system comprising a weight unit consisting of a plurality of weights with each of the weights 40 formed of a pair of upstanding plates 42 and two bars 43 connecting each pair of plates. A handle 35 has opposing ends. Extendable elements 52,53 protrude from each end of the handle. Operation of a knob 55 extends and retracts the extendable elements to engage the weights. A visual indicator 37 indicates the amount of weight selected. The handle comprises a grip with two endplates 31,32 and a channel in the grip in which the extendable elements may be extended from or retracted into. Each weight forms a weight unit that is nested relative to an adjacent weight unit. The ends of the handle have surfaces parallel to end surfaces of the weights. The upstanding weights have a shape to include an angle on each side causing their edges to not be parallel with one another, as to allow the top width to be wider than the bottom. The handle has adequate space to allow room for two hands. Note the use of two hands is an intended use and the adequate space on the handle is merely a change in size of the handle. Industry standard grip dimensions is not defined in the specification.

***Allowable Subject Matter***

7. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose a weight system wherein the grip contains two channels for



first and second rods, the first rod having teeth along a length thereof, and moveable by a gear connected to a knob, a pinion gear engaging the teeth, and the second rod having teeth moveable by the pinion gear.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

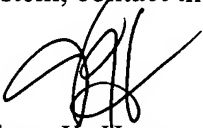
*Chen* (US Pat. D422,654), *Chen* (US Pat. 6,149,558), *Chen* (US Pat. Pub. 2002/0128127 A1), *Chen et al.* (US Pat. Pub. 2003/0148862 A1), *Towley, III et al.* (US Pat. Pub. 2004/0162198 A1) and *Sanford-Schwentke et al.* (US Pat. Pub. 2004/0198569 A1) disclose weight lifting systems having features that read upon some of the claimed limitations.

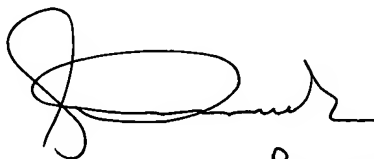
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Victor K. Hwang  
December 12, 2005

  
Primary